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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

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No. 669

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JOSEPH COHEN, ET AL,

*Petitioners,*

*vs.*

THE UNITED STATES OF AMERICA

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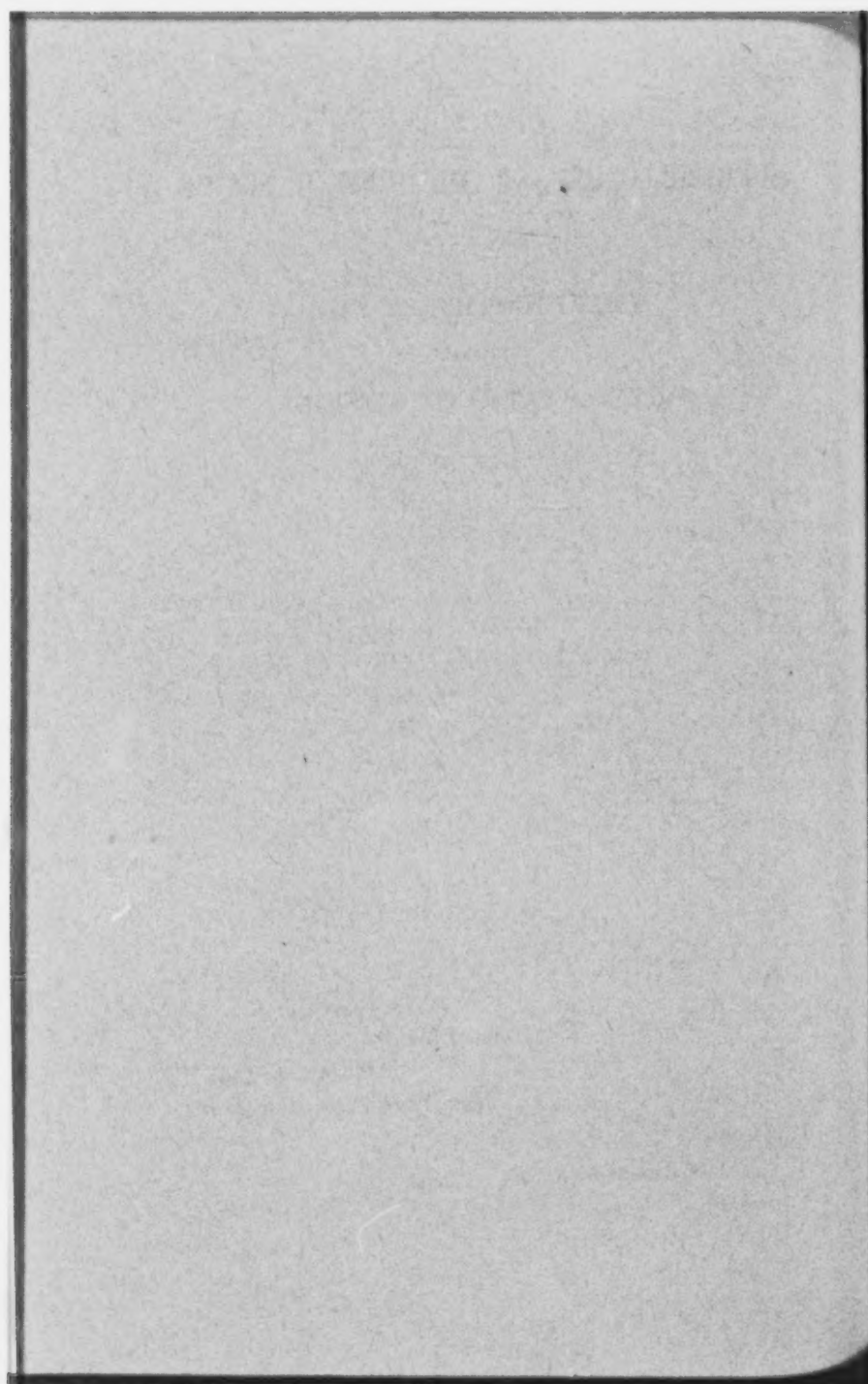
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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MOTION FOR LEAVE TO PROCEED ON TYPE-  
WRITTEN RECORD

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WALTER BROWER,  
*Counsel for Petitioner.*



SUPREME COURT OF THE UNITED STATES

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JOSEPH COHEN, ET AL.,

*against*

*Petitioners,*

UNITED STATES OF AMERICA

SIR:

NOTICE is hereby given that petitioner JOSEPH COHEN, on the ground of inability to pay the cost of printing respectfully moves the Supreme Court of the United States for leave to file, for the purposes of his petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit, and appeal, the typewritten copy of the record now on file with the Clerk of this Court, and the original exhibits, all in lieu of printed copies thereof, as required by the Rules of this Court.

FURTHER NOTICE is hereby given that this motion has been filed simultaneously with the petition for a writ of certiorari in the above matter.

Dated, New York City, November 1st, 1944.

Yours, etc.,

WALTER BROWER,  
*Attorney for Joseph Cohen,*  
165 Broadway,  
New York City, New York.

TO HON. CHARLES FAHY,  
*Solicitor General.*



# SUPREME COURT OF THE UNITED STATES

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JOSEPH COHEN, ET AL.,

*against*

*Petitioners,*

UNITED STATES OF AMERICA

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*To the Honorable Chief Justice of the United States and  
the Associate Justices of the Supreme Court of the United  
States:*

The petition of Joseph Cohen respectfully shows:

1. I am the petitioner herein and in the proceedings for a writ of certiorari in connection with which this application is made.

2. This is an application for leave to file with this Court for the purposes of the petition for a writ of certiorari and the appeal, in the event such petition is granted, a typewritten copy of the record and the original exhibits in lieu of printed copies thereof as required by the Rules of this Court.

3. Application for this relief is necessary because of the unusual size of the record, the cost of printing the same and the almost prohibitive expense involved in the trial and resulting judgment of which review is sought.

4. I was tried in the District Court of the Southern District of New York on an indictment charging me and seventy-four other defendants with violations of Title

18, U. S. C. Sections 338 and 88. There were twenty-nine substantive mail fraud counts and one count charging conspiracy to use the mails.

5. After a trial lasting over seven months (from August 4th, 1941, to March 10th, 1942) I was found guilty on five substantive counts and the conspiracy count. I was sentenced to a total term of seven years imprisonment and a fine of \$5,000.00.

The judgment of conviction was affirmed by the United States Circuit Court of Appeals for the Second Circuit. A petition for a writ of certiorari to the Circuit Court of Appeals is now being prepared and will be docketed with the Clerk of this Court simultaneously with the filing of this application.

For the merits of my appeal and the legal propositions there involved, I respectfully refer to the aforementioned petition for a writ of certiorari, which for that purpose I incorporate herein by reference with the same effect as though herein set forth in full.

6. During this seven months trial, a total of sixteen thousand pages of testimony were transcribed, which were reduced for the purpose of certification to the United States Circuit Court of Appeals for the Second Circuit to twelve thousand pages by stipulation and Court order. There were some four thousand exhibits received in evidence, some of which consist of great batches of documents and books having several hundred pages. Illustrative of the extent of the stenographic problem which was involved is the fact that the one volume which lists the exhibits was typewritten at a cost of \$300.00.

7. On appeal to the Circuit Court of Appeals for the Second Circuit, that Court by order dispensed with the

printing of the record and briefs. Notwithstanding permission to file the typewritten record the preparation of that typewritten record cost about \$20,000.00, of which sum I paid \$8,000.00.

8. The certified record, exclusive of exhibits, filed with the Clerk of this Court consists of 13,332 pages.

9. A further reduction in the size of the record for the purpose of printing is not possible without the certain danger of prejudicing my appeal to this Court. I am so advised by my attorney and verily believe. Among the reasons for this is that although there was a single conspiracy alleged in the indictment, proof was offered and received of over two hundred separate and unconnected and unrelated conspiracies with small groupings of defendants, none more than five, most less than three. These two hundred separate and unrelated conspiracies involved five hundred separate transactions. The evidence of all of these two hundred separate conspiracies and five hundred separate transactions was ruled by the trial judge to be binding on all the defendants including petitioner.

10. I am informed that printing of the record would cost approximately \$37,000.00.

11. The expense of the trial of this matter, the appeal to the United States Circuit Court of Appeals, the publicity and resulting injury to my business reputation and earning capacity because of this indictment and conviction have brought me to a point where I have not the money, resources or earning capacity to pay for printing of the record or even additional typewritten copies thereof. Consequently, a denial of this application would be tantamount for me to a denial of a review of my case by this Court.



12. I have already expended and obligated myself to pay by reason of the indictment and conviction here, the sum of \$52,700.00. The items comprising this sum are stenographic charges \$8,000.00, investigations and incidentals in connection with preparation for this long trial \$2250.00, trial and appellate counsel fees, including fees paid to attorneys for services before the Securities and Exchange Commission as a result of this case \$38,450.00. Because of the conviction and indictment herein an unfounded action was brought against me for \$25,000.00, defense of which was not feasible after the conviction. I was therefore compelled to settle and pay for a disposition of this action the sum of \$4,000.00.

13. I am legally engaged in the securities business buying and selling securities as a registered dealer in the State of New York. By reason of this conviction I am required by law to restrict my business to intrastate transactions. This factor in addition to the adverse publicity involved by this action and the expense involved has reduced my financial resources to less than \$5,000.00. My earnings do not exceed the rate of \$5,000.00 per annum. In order to cover the heavy expenses involved in this proceeding, it has been necessary for me to augment my income by the earnings of my wife, who has worked until recently as a saleslady for the R. H. Macy Department Store in New York City at \$20.00 per week. Her employment terminated recently because of ill health. I have borrowed on my life insurance policies the entire cash equity therein available for loan purposes.

To my deep regret, in addition to this, I have had to call on a monthly allotment of \$100.00 which I receive from the United States Navy through my son who is presently on active duty in the Pacific area of operations as a United States Naval Lieutenant (j. g.).

All of this I have been required to and did do in order to cover the mounting costs of this action in addition to my modest living expenses.

14. I am seeking a review of the judgment on substantial legal questions. I am advised by my attorney and verily believe that substantial errors of law have been committed in the course of my trial which have not been corrected by the Circuit Court of Appeals. A denial of this application would result in closing the door to me to such redress as after review this Court might decree.

I most respectfully pray that I may not be denied this relief by reason of my financial inability to pay this unusual and enormous printing bill.

15. Wherefore, I respectfully ask for leave to file with this Court for the purposes of the petition for a writ of certiorari and the appeal, if the writ be granted, the type-written record together with the original exhibits in lieu of printed copies thereof as required by the Rules of this Court.

16. That no previous application for the relief here sought has been made.

Dated, New York, November 1st, 1944.

JOSEPH COHEN.

STATE OF NEW YORK,  
City of New York,  
County of New York, ss:

JOSEPH COHEN, above named, being duly sworn, deposes and says that he is the petitioner in the within action, that he has read and knows the contents of the foregoing petition, that the same is true to his own knowledge,

except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

JOSEPH COHEN.

Sworn to before me this 1st day of November, 1944.

FRANK FINBERG,

*Notary Public, Kings County.*

Kings Co. Clk's No. 226 Reg. No. 284-F-6.

N. Y. Co. Clk's No. 666 Reg. No. 418-F-6.

Commission Expires March 30, 1946.

# SUPREME COURT OF THE UNITED STATES

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JOSEPH COHEN, ET AL.,

*Petitioners,*

*against*

UNITED STATES OF AMERICA

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STATE OF NEW YORK,

*City of New York,*

*County of New York, ss:*

WALTER BROWER, being duly sworn, deposes and says:

That he is counsel for the petitioner, JOSEPH COHEN.

That a petition for writ of certiorari in behalf of JOSEPH COHEN is presently being prepared to be docketed with the Clerk of this Court on or before December 5th, 1944, simultaneously with the filing of the annexed petition.

The petitioner JOSEPH COHEN has substantial and meritorious grounds as the basis for the application for the writ of certiorari and in the considered opinion of your deponent there are reasons for the granting of the petition for writ of certiorari within the purview of Rule 38 (5) (b) of this Court.

For the specific questions of law and reasons for granting of the petition for writ of certiorari, deponent respectfully refers to the said petition for writ of certiorari and

incorporates the same herein by reference with the same force and effect as though here set forth in full.

WALTER BROWER.

Sworn to before me this 1st day of November, 1944.

FRANK FINBERG.

*Notary Public, Kings County.*

Kings Co. Clk's No. 226 Reg. No. 284-F-6.

N. Y. Co. Clk's No. 666 Reg. No. 418-F-6.

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